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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 983.

LANASA FRUIT STEAMSHIP AND IMPORTING COMPANY, INC., A BODY CORPORATE,
Petitioner,

vs.

UNIVERSAL INSURANCE COMPANY,
A BODY CORPORATE,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

But for the fact that respondent's brief bases an argument in opposition to our Petition for Writ of Certiorari on matters wholly outside the record, we would not give it reply, but since that argument is based, not only on facts not of record, but on an erroneous statement of facts, as shown by the ship's log, we cannot let the statements go unchallenged.

The pleading point, discussed on page 2 of Respondent's brief, is not only wholly without merit, but it should be noted was *not* raised in either court below, and was clearly designed to be read with their erroneous statement on page 4, where it is said, "* * *, the ship was delayed for a few hours, but successfully overcame the sea peril and completed the voyage."

There is not only no proof of the statement, but the facts (well known to the respondent through their representatives who boarded the vessel when aground), were, as follows:

The Smaragd sailed from Baracoa, Cuba, for Baltimore, at 3:30 P. M. [Wednesday] July 17th, 1935. Grounded on Seven Foot Knoll at 11:35 P. M. [Sunday] July 21st, 1935. Floated [Saturday] July 27th, 1935, at 3 P. M., but prior to floating entire cargo rotted, was destroyed, discharged on lighters and dumped overboard, and voyage, therefore, never completed.

These facts are outside the record, as is their statement that "the ship was delayed for a few hours, but successfully overcame the sea peril and completed the voyage", and are only submitted because of the gratuitous and erroneous statement above quoted.

On page 3, they also say, "in the case at bar, however, the vessel completed the voyage without expense due to the stranding * * *". There is also no proof of this statement in the record, and it is untrue in fact, as evidence, known to respondent, which we were precluded from presenting by the District Court, would have clearly shown (R. 27-8).

These and other matters in respondent's brief seem primarily directed to an effort to direct the mind of the Court to other than the vital issue of proximate cause here involved, the American Rule being in conflict with the British Rule, and the former being that which petitioner says should be here applied.

Dated June 21st, 1937.

Respectfully submitted,

GEORGE FORBES,

HENRY L. WORTCHE,

Counsel for Petitioner.